IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4003 OF 2006

Janardan G. Nene & Ors. ....Petitioners
V/s.
The State of Maharashtra & Ors. ....Respondents

WITH

WRIT PETITION NO.4037 OF 2006

Janardan G. Nene & Ors. ....Petitioners
V/s.
The State of Maharashtra & Ors. ....Respondents

Mr.S.M. Oak for the Petitioners.
Mr.A.H. Palekar, AGP for the Respondents.

CORAM : R.M. SAVANT, J.
DATED : 7TH JUNE, 2007.

P.C. :

1. Rule. Rule with the consent of the parties made returnable forthwith and heard.

2. Both these Petitions filed under Article 227 of the Constitution of India impugning the orders passed by the Special Land Acquisition Officer-V, Solapur, rejecting their applications for making reference under Section 18 of the Land Acquisition Act, 1884 (for brevities sake "the said Act").

3. The factual matrix involved lies in a narrow campus :

. **Facts in Writ Petition No.4003 of 2006 :**

. The Petitioners are the original owners of land admeasuring 19.96-R bearing Survey No.4432, situated at village Mangalwedha, Taluka Mangalwedha, District Solapur. The said land was required for the purposes of Ujani Canan. The notification under section 4 of the said Act came to be issued on 16.9.1999 stating that the lands belonging to the Petitioners will be acquired for the purposes of the said Ujani Canan Project. The award in respect of the said land was declared on 19.3.2001. 12(2) notices were received by the Petitioners on 29.4.2005. The amount of compensation was fixed at Rs.1,00,973/- by S.L.A.O. The same was accepted by the Petitioner. The Petitioner made an application on 9.6.2005 to the S.L.A.O. for making a reference under Section 18 of the said Act which was numbered as Application No.5 of 2005 which came to be rejected by the S.L.A.O. by the impugned order dated 20.12.2005.

4. **Facts in Writ Petition No.4037 of 2006 :**

. The Petitioners are the original owners of land admeasuring 0.65-R bearing Survey No.3422, situated at village Mangalwedha, Taluka Mangalwedha, District Solapur. The said land was being required for the purposes of Ujani Canan. The notification under section 4 of the said Act came to be issued on 25.10.2001 stating that the lands belonging to the Petitioners will be acquired for the purposes of the said Ujani Canan Project. The award in respect of the said land was declared on 24.9.2003. 12(2) notices were received by the Petitioners on 5.6.2005. The amount of compensation was fixed at Rs.57,681/- by S.L.A.O. The same was accepted by the Petitioner. The Petitioner made an application on 15.7.2005 to the S.L.A.O. for making the reference under Section 18 of the said Act which was numbered as Application No.88 of 2005 which came to be rejected by the S.L.A.O. by the impugned order dated 30.1.2006.

5. The reasons which have given by the S.L.A.O. for rejecting the said applications in both the Petitions are identical and are reproduced hereunder. (i) The applications filed under Section 18 of the said Act has not been filed within a period of 6 months from the date of declaration of award. (ii) No

evidence has been produced indicating that the amount of compensation in respect of the land is accepted under protest. (iii) No evidence has been produced indicating raising of objection while enquiry under Section 9(3)(4) of the Land Acquisition Act, 1894 and the Land Acquisition (Amendment) Act, 1894 and no evidence about the development carried out for the land.

6. Section 18 of the said Act is reproduced hereunder :-

> **"18. Reference to Court. -** (1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the appointment of the compensation among the persons interested.
>
> (2) The application shall state the grounds on which objection to the award is taken :
>
> Provided that every such application shall be made, -
>
> (a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector’s award ;
>
> (b) in other cases, within six weeks of the receipt of the notice from the Collector under Section 12, sub-section (2), or within six months from the date of the Collector’s award, whichever period shall first expire."

7. The Petitioners rely upon an unreported judgment of a learned Single Judge of this Court (Per Dr.D.Y. Chandrachud, J.) in Writ Petition No.1313 of 2006 dated 10.4.2006. The said Petition involved identical facts as acquisition was for the same Ujani Canan. Relying upon the said judgment, the learned counsel for the Petitioner states that the impugned orders passed by the S.L.A.O. in both the Petitions are erroneous in the facts of the case and therefore are unsustainable.

8. The learned Judge in the said judgment, relying upon the judgment of the Apex Court in *Raja Harish Chandra Raj Singh vs. The Deputy Land Acquisition Officer, AIR 1961 SC 1500* and the recent judgment of the Apex Court in *Parshottambhai Maganbhai Patel vs. State of Gujarat, (2005) 7 SCC 431*, has held that making of award in the context of proviso to Section 18 of the said Act would mean communication of the award to the landholder. Relevant paragraph 4 of the said judgment of the learned single Judge is reproduced hereunder :-

> Now, the principal issue which arises for consideration in the present matter is as to whether application for a reference under

> Section 18 was within the period of time stipulated in sub-section (2) of Section 18.The proviso to sub-Section (2) lays down as follows :-
>
> "Provided that every such application shall be made, -
>
> (a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award ;
>
> (b) in other cases, within six weeks of the receipt of the notice from the Collector under Section 12, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire."

Clause (a) of the proviso applies whether the person who has made the application was present before or was represented before the Collector at the time when the award was made. The proviso has no application in the present case since the Petitioner was neither present before the Collector, nor had he been represented when the award was made. In other cases which are governed by proviso (b), the application has to be filled within six weeks from the receipt of the notice from the Collector under sub-section (2) of Section 12, or within six months from the date of the Collector's award whichever period shall first expire. The words "date of the Collector's award" were interpreted in the judgment of the Supreme Court in Raja Harish Chandra Raj Singh vs. The Deputy Land Acquisition Officer, AIR 1961 SC 1500. The Supreme Court held that the award of the Collector being in the nature of a tender or offer made by the Collector on behalf of the Government to the owner of the property for his acceptance, the making of the award as properly understood must involve the communication of the offer to the party concerned. Consequently, the Supreme Court has held as follows :

> "Therefore, if the award made by the Collector is in law no more than an offer made on behalf of the Government to the owner of the property then the making of the award as properly understood must involve the communication of the offer to the party

> concerned. That is the normal requirement under the contract law and its applicability to ceases of award made under the Act cannot be reasonably excluded. Thus considered the date of the award cannot be determined solely by reference to the time when the award is signed by the Collector or delivered by him in his office ; it must involve the consideration of the question as to when it was known to the party concerned either actually or constructively. If that be the true position then the literal and mechanical construction of the words "the date of the award" occurring in the relevant section would not be appropriate."

In para 6 of the judgment, the Supreme Court has held as follows :-

> "There is yet another point which leads to the same conclusion. If the award is treated as an administrative decision taken by the Collector in the matter of the valuation of the property sought to be acquired it is clear that the said decision ultimately affects the rights of the owner of the property and in that sense, like all decisions which affect persons, it is essentially fair and just that the said decision should be communicated to the said party. The acknowledge of the party affected by such a decision, either actual or constructive, is an essential element which must be satisfied before the decision can be brought into force. Thus considered the making of the award cannot consist merely in the physical act of writing the award or signing it or even filing it in the office of the Collector, it must involve the communication of the said award to the party concerned either actually or constructively. If the award is pronounced in the presence of the party whose rights are affected by it it can be said to be made when pronounced. If the date for the pronouncement of the award is communicated to the party and it is accordingly pronounced on the date previously announced the award is said to be communicated to the said party even if the

> said party is not actually present on the date of its pronouncement. Similarly if without notice of the date of its pronouncement an award is pronounced and a party is not present the award can be said to be made when it is communicated to the party later. The knowledge of the party affected by the award, either actual or constructive, being an essential requirement of fairplay and natural justice the expression "the date of the award" used in the proviso must mean the date when the award is either communicated to the party or is known by him either actually or constructively. In our opinion, therefore, it would be unreasonable to construe the words "from the date of the Collector's award used in the proviso to S.18 in a literal or mechanical way."

The law laid down by the Supreme Court in *Raja Harish Chandra Raj Singh's* case has recently been followed in *Parsottambhai Maganbhai Patel vs. State of Gujarat, (2005) 7 SCC 431."*

9. Applying the said principle to the facts of the present case, the knowledge of making of the award can be attributed to the Petitioners only when the award came to be communicated either actually or constructively, as held by the Apex Court. Even if the notice under Section 12(2) is taken as the date on which such knowledge can be imputed, the period of six weeks under the proviso (b) would be taken to run with effect from the date of service of that notice. Admittedly in both the above cases, the application under Section 18 of the said Act was filed within the period of six weeks of the receipt of the notice under Section 12(2). In the said circumstances, the

S.L.A.O. was in error in rejecting the application as barred by time by compounding the period of six weeks from the date of declaration of the award by the Collector from signing of the award or filing of the award in the office of the Collector cannot be awarded as the date of the award of the Collector for the purpose of Section 18 of the said Act in view of the law laid down by the Apex Court. In my view, therefore, the S.L.A.O. was in error in rejecting the application on the said ground.

10. The second ground of rejection that no evidence has been produced indicating that the amount of compensation in respect of the land was accepted under protest. The said ground has also been dealt with the by Apex Court in *Ajit Singh vs. State of Punjab (1994) 4 SCC 67*, where the Apex Court has held that since the Appellant therein had made an application for reference under Section 18 of the said Act, that would itself manifest his intention to accept the compensation under protest. The third ground given by the S.L.A.O. that no evidence was produced in regard to the development carried out, the said matter is to be decided by the Court of competent jurisdiction under a reference under Section 18 of the said Act and it was therefore, not open to the third

Respondent to dwell upon the said aspect.

11. For the aforesaid reasons, the impugned orders of the S.L.A.O. in both the Petitions are unsustainable and both the Petitions would have to be accordingly allowed. Rule is made absolute by quashing and setting aside the impugned orders dated 20.12.2005 and 30.1.2006. The S.L.A.O. is directed to make a reference to appropriate Court as defined under Section 3(d) of the said Act, within four weeks the receipt of a copy of this order.

No order as to costs.

(R.M. SAVANT, J.)